COURT NO. 2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 57 of 2004

The Oriental Insurance Company Ltd. … **Appellant.**

Versus

Nafis Ahmad
and others. … **Respondents.**

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 28-10-2003, passed in M.A.C.T. Petition No. 121 of 2001, Nafis Ahmad Vs. Smt. Qamar Jahan Hashmami and another, by the Motor Accident Claims Tribunal/Addl. District Judge, I F.T.C. Udham Singh Nagar ***(hereinafter referred to as the Tribunal),*** whereby the learned Tribunal has awarded a sum of Rs. 3,46,,000/- along with interest @ 5% per annum in favour of the claimant-respondent no. 1 as against the Opposite Party No.2 –appellant. Aggrieved, the Insurance Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground of holding of valid driving licence by the driver of offending bus No. URM/8505, and breach of policy conditions as well as quantum of compensation and it has been contended the findings of the learned Tribunal are not based on evidence on record.

Brief facts are the claim petition was filed before the learned Tribunal for the death of Smt. Salama ***(the deceased)*** on account of injuries sustained by her in a motor accident on 1.3.2001 at 4.00 p.m., with the allegations that on the fateful day, the deceased was standing at the house of her door along with her

children. In the meantime, bus No. URM-8505 driven rashly and negligently came from the side of Jaspur entered the house of the claimants by breaking the door and wall, with result the deceased sustained grievous injuries. She was rushed to Combined Hospital Jaspur and then referred to Safdar Jang Hospital New Delhi on 6.3.2001, where during her treatment, she succumbed to her injuries. The O.P.No.1, the owner of the bus, contested the petition refuting the negligence of the bus driver, rather the deceased died due to illness. It has been pleaded that the bus being duly insured, the liability rests on the Insurance Company-appellant. O.P.No.2-appellant also contested the claim petition and denied the allegations made in the petition challenging the quantum of compensation claimed and rash and negligence on the part of bus driver.

The learned Tribunal framed necessary issues in the case. On Issue No.1, the learned Tribunal came to the conclusion that the motor accident in question was the result of the rash and negligent driving by the driver of the bus involved in the accident. the Tribunal found that paper no. 39-Ka/16 in form No. 54, the driving licence was available on record, which was valid upto 27.1.2001 and it has been held that only because the driving licence has not been renewed, therefore, it has been held that since the driving licence has been effective from 28.1.90, the driver was a skilled driver and relief cannot be refused only on this ground. On Issue No.2, the learned Tribunal after considering the entire evidence has found that the bus in question was duly insured, therefore, the Insurance Company-appellant is liable to pay compensation. On the basis of evidence on record, the monthly income of the deceased was proved to be Rs. 3,000/- and the learned Tribunal found that annual loss of dependency can be safely determined at Rs. 18,000/-. The deceased was aged 28 years at the time of her death, therefore, multiplier of ***18*** was applied and the Tribunal has ultimately awarded a sum of Rs. 3,46,000/- as total

compensation in favour of the claimant as against the Insurance Company.

We have heard learned counsel for the appellant, Mr. Prabhat Pande as well as learned counsel for the claimant-respondent, Mr. Dharam Veer, Senior Advocate, and have carefully scrutinized the entire material before us including the impugned judgment and award.

It has been vehemently argued before us on behalf of the appellant that the driver of the bus involved in the accident was not holding a valid and effective driving licence on the date of accident and that the quantum of compensation is excessive, therefore, the findings of the Tribunal are perverse. On other hand, it has been submitted on behalf of the claimant-respondent that the learned Tribunal has given a categorical finding that the drive, who has been holding a valid driving licence from 28.1.1990 till 27.1.2001 cannot be held to be disqualified driver and the Insurance Company cannot be exonerated from its liability to pay the compensation. It has also been submitted that the Insurance Company has no right to challenge the quantum of award in the present appeal.

Having gone through the matter in controversy, particularly on the point of driving licence in the light of the settled law of the Apex Court and the material on record, we find that before the Tribunal, the appellant-Insurance Company has raised a plea of holding of valid driving licence by the driver of the bus involved in the accident and Issue No. 2 has been framed by the Tribunal. Mere taking of a plea cannot be held to proof thereof. From a perusal of paper no. 39-Ka/16, Form No. 54 is the report obtained by the Investigator of the appellant, Suresh Johari, which shows that the licence possessed by the driver was valid for the period 28.1.1990 to 27.1.2001. This witness has also been examined before the Tribunal in support of the case of the

appellant. Defence has been taken by the appellant that the driver of the offending vehicle was not holding a valid driving licence, therefore, the burden to proof lay on the appellant-Insurance Company. When the investigator of the company had obtained a report from the R.T.O. Rampur to show that the driving licence of the driver was valid for the period 28.1.1990 to 21.1.1001 and the accident occurred on 1.3.2001, then there was full opportunity to the appellant to have obtained a report from the concerned Licensing Authority to the effect that the driver of the offending vehicle had not applied for renewal of the driving licence within the stipulated period, i.e. within thirty days of the expiry of driving licence. From the record, it is evident that the alleged driving licence was valid upto 27.1.2001. Had there been positive evidence that the application for renewal of driving licence was not moved, there was no reason for D.W.1 Suresh Jauhari to have not stated in evidence that no steps have been taken for the renewal of the driving licence within the statutory period either by the driver or the owner of the vehicle to substantiate the contention of the appellant that driver of the offending vehicle was not holding a valid driving licence. The Hon'ble Apex Court has considered the relevant provisions of the Act vis-à-vis breach of policy condition, e.g., disqualification of driver, etc. have been elaborately considered by the Apex Court in the case of ***"National Insurance Company Limited Vs. Swaran Singh and others" [2004(3), Supreme Court Cases, 297]*** and the paragraph nos. 45 and 46 of the judgment are reproduced below:-

> ***45. Thus, a person whose licence is ordinarily renewed in terms of the Motor Vehicles Actand the rules framed thereunder despite the fact that during the interregnum period, namely, when the accident took place and the date of expiry of the licence, he did not have a valid licence, he could during the prescribed period apply for renewal thereof and could obtain the same automatically without undergoing any further test or without having been declared unqualified therefore, Proviso appended to Section 14 in unequivocal terms states that the licence remains valid for a period of thirty days from the day of its expiry.***

46. Section 15 of the Act does not empower the authorities to reject an application for renewal only on the ground that there is a break in validity or tenure of the driving licence has lapsed as in the meantime the provisions for disqualification of the driver contained in Sections 19, 20, 21, 22, 23 and 24 will not be attracted, would indisputably confer a right upon the person to get his driving licence renewed. In that view of the matter he cannot be said to be delicensed and the same shall remain valid for a period of thirty days after its expiry.

Moreover, in paragraph 110(iii) of the judgment, the Apex Court has held as under:-

> ***"The breach of policy condition, e.g., disqualification of driver or invalid driving licence of the driver, as contained in sub-section (2)(a)(ii) of section 149, have to be proved to have been committed by the insured for avoiding liability by the insurer. Mere absence, fake or invalid driving licence or disqualification of the driver for driving at the relevant time, are not in themselves defences available to the insurer against either the insured or the third parties. To avoid its liability towards insured, the insurer has to prove that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time."***

Taking into consideration the entire material before us, particularly the evidence led by the appellant-insurance company before the Tribunal on the point, as mentioned earlier, we are of the clear opinion that in view of the aforesaid provision of law laid down by the Apex Court, no advantage goes in favour of the appellant in the present case. There is nothing on record to indicate that the insurer has proved that the insured was guilty of negligence and failed to exercise reasonable care in the matter of fulfilling the condition of the policy regarding use of vehicles by duly licensed driver or one who was not disqualified to drive at the relevant time

or that the driver had not applied for renewal of his driving licence within the statutory period of thirty days from its expiry. Therefore, the argument on this score has no bearing.

So far as the contention challenging the quantum of compensation is concerned, in the present case, it is not open to the appellant-Insurance Company to take such a defence/plea in appeal. We are supported in our opinion by the verdict of the Apex Court in the case of ***"National Insurance Co. Ltd. Chandigarh Vs. Nicolletta Rohtagi and others"[(2002)7, S.C.C., 456]*** and subsequently, in the case of ***"National Insurance Company Limited Vs. Swaran Singh and others" (2004 (3), S.C.C., 297) (supra).*** In the case of ***Nicolletta Rohtagi and others (supra),*** it has been held by the Hon'ble Apex Court that ***"even if no appeal is preferred under Section 173 if 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** In the subsequent case law, the provisions of ***Section 147 and 149(2) of the Motor Vehicles Act, 1988*** were also elaborately discussed. We have carefully perused the aforesaid case laws and the pronouncement of the Apex Court in both the two cases referred to above. The facts of the case under appeal are squarely covered by the law laid down by the Apex Court in the case of ***Nicolletta Rohtagi and others (supra).*** Therefore, we are of the consistent view that the appellant-Insurance Company is not entitled to challenge the quantum of award of the Tribunal. Accordingly, having considered the case laws of the Apex Court, in any view of the matter the contention raised by the appellant is not tenable in the eye of law. Therefore, we have no option but to confirm the findings recorded by the learned Tribunal.

However, in the peculiar facts and circumstances of the present case, we direct that the Insurance Company, after satisfying the entire amount under the impugned award in the

executing court, may, if it so desires, file objections on the point that driver of the offending vehicle was delicensed on the date of accident and to show that there has been breach of policy conditions as held by the Hon'ble Apex Court. The Motor Accident Claims Tribunal shall afford opportunity of hearing to the owner of the vehicle, respondent no.3 and the appellant and then shall decide the dispute between the insurer and the insured in accordance with the provisions of the Act on the relevant point.

With the above observation, the appeal is disposed of finally. No order as to costs.

The amount in deposit with this Court shall be remitted to the Motor Accident Claims Tribunal concerned.

24-08-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**
RCP